

DRAFT Competency Based Training on Client Rights
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The following is a list of competencies adopted by the Communications and Training Section of the Division of MH/DD/SA of the Department of Health and Human Services of the State of North Carolina for Training to Prevent Use of Restraints, Seclusion and Isolation Time Out. It contains only the portion labeled "A. Training for prevention/alternatives part 5. Client rights as defined in NC state laws and rules." For each competency I have written some general information and in many cases have quoted the appropriate sections of the statutes or rules. This is not a comprehensive study guide on client rights in the service system but it is an attempt to cover the competencies listed.

Competency - a) Describe rights that protect all citizens under the U.S. Constitution and state law.

The following is a list of rights that are guaranteed under the Constitution and laws of the United States and North Carolina:

Privacy

Even when people who are receiving services in a facility live in group situations they have a right to privacy. The need for privacy is a cultural and an individual matter. Some people need privacy when they are upset or when they are tired. Some have a high need for privacy while others require less time alone. It is important to provide space and time for all people to have privacy to the extent that they desire in their home. If they live in a facility where they must share bedrooms arrangements must still be made to provide opportunities for each person to have time alone.

Freedom of association

People who are receiving services still have the right to choose those with whom they wish to associate. Living situations should be set up to facilitate opportunities for people to freely choose friends and acquaintances from among the members of their community. If a person has been adjudicated incompetent and has a guardian, he still can choose his friends and associates. The statutes on guardians and wards N.C.G.S. 35A-1201 allows for people to be involved in all decisions and to make mistakes to the same extent as others. Choosing friends and associates is not one of the listed powers and duties of the guardian of the person in N.C.G.S.35A -1241. This is an area where there is often a problem when a family has been divided by divorce or dissension and a guardian attempts to control who can visit with the person with a disability.

Freedom from cruel and unusual punishment

People have a right to learn in environments that are

The misconceptions about people with disabilities and their ability to feel pain or to learn has resulted in many cruel and unusual punishments being inflicted on them which would never be allowed for persons who do not have disabilities. Corporal punishment, seclusion, and mental or physical abuse should never be used. This is not permitted under the U.S. Constitution and should never be part of a service plan. In some cases other procedures may be considered when all other options have failed to assist the individual. They should be carefully monitored and should be done only with the consent of the individual, the guardian and human rights or client rights committees.

Right to marry, procreate and raise children

This right is considered one of the most fundamental rights of any person. In the past there was a mistaken belief that people with disabilities would produce other people with disabilities and that this was something that must be prevented by sterilizing them. Because of this abuse of sterilization there is a special section of North Carolina law outlining the only way for a person with a mental disability who has been declared incompetent to be sterilized. It is N.C.G.S.35 A guardian may not consent to sterilization only a court can make a determination that it is appropriate. The court is required to consider the wishes of the person with the disability when deciding.

Right to vote

Some states have laws that preclude a person who has been declared incompetent from voting. North Carolina does not have such a law. A person who desires to vote but cannot do so without assistance such as someone to read the ballot to him or someone to assist with marking the choices must be provided with such assistance.

Freedom of speech and expression

This is a right that is considered very important by many people but it has not often arisen as an issue for people with disabilities. Self advocacy could be the arena for some concerns about this. People should receive appropriate support to participate in self advocacy activities.

Equal protection of the law and due process Due process as it relates to the rights of persons who receive services in our system of Mental Health Developmental Disabilities and Substance Abuse Services is about fundamental fairness. People with disabilities whose rights are restricted for the purpose of protecting them from harm and/or teaching them skills are entitled to the benefit of due process protections. This paper will describe the practices recommended to comply with due process when a person receiving services

is subject to rights restrictions. Due process protections are required regardless of the person's competency and guardianship status.

Freedom of religious expression

This right is the same for all citizens. It allows everyone to profess and practice any religion they choose. Individuals who are receiving services in residential settings may need support to practice the religion of their choice. This could include transportation and assistance to get materials from religious groups and assistance to understand them. Religion is a private matter and should not be forced upon others. The free exercise of religion should not infringe on the rights of others.

Right to own property

People with disabilities have the same rights to buy and sell property as others. When there has been a guardian of the estate appointed that person will have to assist the person in managing money and property. When there is only a guardian of the person appointed there might be a representative payee who can assist the person in receiving and paying out money. It should always be a goal for people to choose how to spend their money for personal items as they choose but the amount of assistance they require will vary.

Equal employment opportunity

There is no right to a job for every citizen but there are laws protecting people with disabilities from employment discrimination both at the state and federal level. In North Carolina we have N.C.G.S. 168A The Persons With Disabilities Protection Act is parallel to the Americans With Disabilities Act at the federal level. Discrimination against people with disabilities is prohibited if the person is "otherwise qualified" for the job. Both laws require employers to provide "reasonable accommodation" for the disability.

Equal educational opportunity

The Individuals with disabilities Education Act provides that all citizens from birth to 21 years must be provided a free, appropriate public education in the least restrictive environment. The child's parents must be involved in the planning for that education and it must be individualized to meet the child's needs.

Competency -b) Describe rights in federal and state laws that exist for people served in the MH/DD/SA system

Some of the federal laws that exist for people in the MH/DD/SA system are as follows:

- 1) IDEA - All children birth through 21 years of age have a right to a free appropriate public education in the least restrictive environment and their parents must be involved in creating an individualized plan for them.
- 2) ADA - Access to public places, no employment discrimination, transportation and telecommunications must be accessible.
- 3) Rehabilitation Act of 1973 - All programs and services which receive federal funds must be accessible to otherwise qualified persons with disabilities.
- 4) Developmental Disabilities Act - Provides funds for planning, legal protection and research and training for the benefit of people with developmental disabilities.
- 5) Fair Housing Amendments of 1989 - Adds people with disabilities to the protections against discrimination in housing.

Some of the state laws are:

- 1) N.C.G.S. 168 Access to public places, right to use public accommodations, may be accompanied by an assistance dog, white cane protects in traffic, vocational rehabilitation for deaf persons promoted, group homes considered a residential use under zoning if not more than six residents.
- 2) N.C.G.S.168A - Similar to ADA protections for access and nondiscrimination.
- 3) N.C.G.S. 122C - Sets up the system of state and community services for mental health, developmental disabilities and substance abuse.

Competency -c) Describe what is meant by the word respect and how it relates to the rights of people being served

There are many aspects of our services that do not promote respect for the people that we serve. Sometimes it is the little things that cause stigma and stereotyping which is certainly not respectful. These can be things like putting a sign out in front of a group home labeling it as a special place for special people instead of making it look like all the other homes in the neighborhood. The right to make choices and control their own lives to the maximum extent possible is another issue of respect. If choices are not honored and people are controlled in aspects of their daily lives they are not being respected. It is not appropriate for adults with disabilities to be treated like children. Doing so is a major lack of respect.

Competency -d) Describe the responsibility to provide people receiving services with information concerning their rights and ways the individual may exercise those rights

People must have the opportunity to understand and exercise those rights that are important to them. This does not mean that everyone will be interested in voting or in practicing religion but all must be given the opportunity to choose what rights they will exercise. This means that they must know what their rights are so that they can choose. People have to have their rights explained to them in a way that they can understand. This may take extra time and require multiple meetings with the person to ensure that

they really understand. That does not mean that you must do that with every person who comes through your door. When you are working with a person extensively over a long period of time you would continue to update and repeat some information about rights if they need that. If it is a brief encounter you would give them an overview in a way that they would be most likely to comprehend and make sure that whoever works with them on a more permanent basis does a more thorough job.

Competency -e) Describe the roles of human rights committees (for state facilities) and client rights committees (for communities) as a safeguard to protect client rights

The human rights and client rights committees provide an impartial body to oversee the service provider's treatment of clients or residents in the case of the state facilities. They should be composed of a variety of people representing families, consumers and advocates. They protect rights by serving as the group who can hear client grievances and complaints. They can review an agency's handling of specific cases of injury or other adverse incidents.

Competency -f) Describe and explain what is meant by confidential information

N.C.G.S.122C -3 (9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

This means that releasing information about people receiving services even if it is not written in their records is not permitted including talking about people or incidents in the service facility to others in the community.

Competency -g) Describe the process for getting written consent for disclosure of confidential information, including ensuring that people who sign consent for release forms understand what they are signing.

The person who is seeking the signature giving consent for disclosure should explain:

- 1) What information will be disclosed
- 2) To whom it will be disclosed
- 3) The purpose for the disclosure
- 4) The length of time the consent is to be valid

Competency -h) Describe possible consequences for not maintaining confidentiality

The penalty for unauthorized disclosure of confidential information is found in both statutes and rules. A person who wrongfully discloses confidential information can be fined up to \$500.00 and can be disciplined or dismissed from employment. *N.C.G.S. 122C-52 (e) Except as required or permitted by law, disclosure of confidential*

information to someone not authorized to receive the information is a Class 3 misdemeanor and is punishable by a fine, not to exceed five hundred dollars (\$500.00).

In addition, under the rules individuals who are employed in area and state facilities and employees governed by the State Personnel Act are subject to suspension, dismissal or disciplinary action for failure to comply with the rules governing confidentiality. (APSM 45-1 T10: 18D.0120 (a))

Individuals other than employees but including students and volunteers who have been given access to confidential information and who have failed to comply with the rules governing confidentiality shall be denied access to confidential information. (APSM 45-1 T10 18D .0120 (b))

Competency -i) Describe what is meant by abuse, neglect and exploitation of people with disabilities

The definition of abuse in N.C.G.S. 108A-101 (a) is "the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health."

The definition of neglect in the statute "refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker." The statute also says that a person who is a resident of a state facility who is, in the opinion of the professional staff of the facility, not mentally competent to give consent to medical treatment, he has no legal guardian and he is in need of treatment. N.C.G.S. 108A-101 (m)

The definition of exploitation in the statute is "illegal or improper use of a disabled adult or his resources for another's profit or advantage." Most service agencies have policies governing the exploitation of clients by staff. This is because of the tremendous difference in power between staff and clients and the vulnerability of clients. Usually all services by clients to staff whether paid or unpaid are not allowed. All gifts of any substantial nature are also usually precluded. N.C.G.S. 108A-101 (j)

Competency -j) Describe the expectations for reporting abuse neglect and exploitation to the local Department of Social Services

Anyone who has knowledge of abuse, neglect or exploitation of a disabled adult is required to report such information to the local Department of Social Services Director or his representative. N.C.G.S. 108A -102 (a)

The report may be oral or written. It should include names, addresses the disabled adult and his caretaker and the nature and extent of the abuse or injury. N.C.G.S. 108A -102 (b)

Anyone who makes such a report shall be immune from liability unless he acted in bad faith. N.C.G.S. 108A -102 (c)

Competency -k) Describe ways to tell people receiving services about their rights to be free from abuse, neglect and exploitation

- 1) Be sure that the person knows what abuse, neglect and exploitation are.
- 2) Make sure that they know to whom to report incidents of abuse, neglect and exploitation
- 3) If the person has difficulty communicating extra precautions should be taken to ensure that they are not abused, exploited or neglected.

Competency -l) Describe the rights of competent adults and minors receiving services to make decisions and choices in their lives.

Competent adults who are receiving services have exactly the same rights as any other competent adult. The fact that they have a disability does not affect their right to have choices in their lives. They are free to choose services and to refuse services and they must not be punished nor discharged for the choices they make. The age of a minor will dictate what decisions and choices she can make without parental or guardian approval. Sometimes service providers mistakenly presume to know what is in the best interest of a person with a disability without regard for the person's expressed interest. Another common mistake is to assume that a person under guardianship is unable to exercise choice. In North Carolina the laws governing guardians and wards make it clear that a person who has been declared incompetent may still exercise all rights that are within his or her capabilities. In addition people with guardians are allowed to make mistakes to the same extent as other people. Since we are all aware of our own as well as the mistakes of others we know that really allows quite a bit of latitude. See N.C.G.S. 35A-1201(5)

Competency -m) Describe ways to ensure informed decision and choice making of people receiving services.

People should have opportunities to learn about different options in services that might be available to them. For example a person should explore what a group home is like as well as a supported living arrangement. All choices require informed decision making. One cannot truly choose unless one understands what options are available. That may require that a person try out some options or visit some programs. Again, N.C.G.S. 35A-1201 which covers guardianship allows for all people to be involved in decisions and choices to the maximum extent of their capabilities and to make mistakes to the same extent as others.